

City of Houston, Texas, Ordinance No. 2004-498

AN ORDINANCE RELATING TO IMPAIRMENTS AND OBSTRUCTIONS OF ROADWAYS AND SIDEWALKS; AMENDING THE CODE OF ORDINANCES, HOUSTON, TEXAS, AND CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; CONTAINING A REPEALER; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, under State law the City is charged with local control over its streets and is authorized to regulate and remove encroachments or obstructions; and

WHEREAS, there are many instances in which persons desire to occupy an area of the streets for purposes such as performing construction or utility work; and

WHEREAS, street obstructions may affect traffic and if not properly managed may impede the orderly movement of vehicles and pedestrians; and

WHEREAS, the City Council desires to establish a permit system to ensure that street obstructions are managed; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as a part of this Ordinance.

Section 2. That Article XVII of Chapter 40 of the Code of Ordinances, Houston, Texas, is hereby amended in its entirety to read as follows:

**"ARTICLE XVII. SIDEWALK AND ROADWAY OBSTRUCTIONS
AND IMPAIRMENTS**

DIVISION 1. GENERAL

Sec. 40-361. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

Central business district or *CBD* means the area beginning at the intersection of the centerline of U.S. 59 and the centerline of I.H. 45; thence in a northwesterly and northerly direction along the centerline of I.H. 45 to its intersection with the centerline of I.H. 10; thence in an easterly direction along the centerline of I.H. 10 to its intersection with the centerline of U.S. 59; thence in a southwesterly direction along the centerline of U.S. 59 to its intersection with I.H. 45, the point of beginning.

Crosswalk means an area upon a roadway that has been designated by the traffic engineer with striping and/or signage as a place for pedestrians to cross the street. The term includes both crosswalks that have been designated at street intersections and those that have been designated between intersections.

Emergency means an unforeseen occurrence that creates a condition of substantial hazard or threat of damage or injury to life or property.

General permit means a permit issued for intermittent short-term (less than 24 hours) obstructions undertaken by utilities or public employees. An obstruction may not occur at the same location for more than seven consecutive days.

Impairment includes an excavation or removal of a sidewalk or portion thereof or an obstruction of a sidewalk or portion thereof.

Local street means a street that is not a major thoroughfare or major collector street.

Major collector street has the meaning ascribed in section 1-2 of this Code.

Major thoroughfare has the meaning ascribed in section 1-2 of this Code.

Obstruction means any vehicle, equipment, fence, structure, bulk waste container, building or construction materials or debris, barricade, cone, sign, barrel, or other thing or object that is placed, planted, left or erected in or upon a roadway or sidewalk that would in any manner prevent or restrict public use of or access to any part of the roadway or sidewalk or restrict the drainage system of the roadway or sidewalk.

Peak traffic hours. This term is limited in its application to pedestrian and vehicular traffic on sidewalks and roadways on major collector streets and major thoroughfares and in the central business district and means the following hours on Mondays through Fridays, excepting holidays other than Veterans' Day that are observed by the closure of city offices: 6:00 a.m. to 9:00 a.m. and 4:00 p.m. to 7:00 p.m.

Permit means a current and valid permit issued under division 2 of this article.

Public employee means an employee of the state or a political

subdivision of the state; the term also includes employees of contractors of the state and its political subdivisions when retained to perform public infrastructure maintenance contract functions, such as water and sewer line point repairs, pothole repairs, traffic signal maintenance and other functions that relate to the ongoing repair, public right of way enhancements including lane line striping, preservation, and cleaning of existing public facilities.

Roadway means the portion of a street that is paved or otherwise improved, designed, or ordinarily used for vehicular travel and/or for on-street parking. In the event a street includes two or more separate roadways, the term 'roadway' shall refer to any such roadway.

Sidewalk means the portion of a street within the central business district that is between the curblines or lateral lines of the roadway and the adjacent property lines and is improved for or ordinarily used for pedestrian travel. Where a street has two sidewalks, the term shall apply separately to each.

Street means the entire width between the boundary lines of every way that is publicly maintained, including sidewalks and crosswalks, provided that the term does not include any street that is primarily maintained by the Texas Department of Transportation or by any political subdivision other than the city.

Utility means a public utility operating under a franchise from the city or a certificated telecommunications provider operating pursuant to Chapter 283 of the Texas Local Government Code.

Vehicle includes a vehicle whether motorized or not and/or a vehicle trailer.

Sec. 40-362. Impairments and obstructions unlawful.

(a) It shall be unlawful for any person to place, cause, or allow any impairment or obstruction of a sidewalk or roadway, except as authorized by a permit.

(b) It is a defense to prosecution under this section that the impairment or obstruction is or consists of:

- (1) A vehicle that is lawfully standing, stopped, or parked in compliance with applicable provisions of this Code and state traffic laws.
- (2) A vehicle that has been rendered inoperable by a mechanical

or other systems failure or by an accident and is stopped pending police investigation and/or towing or recovery services.

- (3) A public transit facility, traffic control device, sign, street light, public trash receptacle, bicycle rack, or other structure or object lawfully placed by or on behalf of the state or a political subdivision of the state.
- (4) A sign or display that is being utilized as part of a lawfully conducted demonstration or rally provided that the object does not obstruct or impair vehicular or pedestrian traffic and further provided that it is used and displayed only during the period of time that the demonstration or rally is attended and ongoing and the attendees remove the sign or display at the conclusion of the demonstration or rally.
- (5) Equipment and materials related to work actively being performed by a utility or public employee that has obtained a general permit.
- (6) Trees, grass, shrubbery, and landscaping that is placed and maintained in a manner conforming to applicable requirements of chapters 32 and 45 of this Code and regulations issued thereunder.
- (7) A parade lawfully conducted under chapter 45 of this Code.
- (8) A sidewalk café authorized under section 40-10.1 of this Code, street function authorized under section 40-27 of this Code, or newspaper vending apparatus placed as authorized under section 40-10 of this Code.
- (9) A valet zone as authorized under section 46-402 of this Code.
- (10) Equipment and materials relating to public infrastructure maintenance work performed, outside of the general permit requirements, by public employees, provided that the work is performed in accordance with a time, place, and manner protocol approved by the traffic engineer.
- (11) Solid waste containers and heavy trash items of the type and size authorized for residential service of the nature provided by the city and city contractors under chapter 39 of this Code that are placed for collection in a manner that does not obstruct the roadway or impair pedestrian use of the sidewalk; however,

this defense does not extend to bulk containers of the 'dumpster' or 'roll-off' type that are typically used to service multifamily residential properties, commercial properties, and construction sites.

- (12) Poles, distribution boxes, and related structures of utilities, provided that they are not placed in such a manner as to obstruct or impair vehicular or pedestrian use of the roadway or sidewalk.
- (13) Postal deposit and delivery boxes, provided that they are not placed in such a manner as to obstruct or impair vehicular or pedestrian use of the roadway or sidewalk.
- (14) A building encroachment or other permanent obstruction for which the abutting owner has a current and valid permit or other authorization as obtained from city council.
- (15) Equipment relating to a sidewalk activity as authorized under article XI of this chapter.
- (16) An emergency as defined in section 40-376 of this Code.

(c) Under the authority granted in section 40-366 of this Code, the director of public works and engineering may issue rules and regulations regarding the application of the defenses set forth in subsection (b), above. It is a required element of any defense asserted under subsection (b) that the actor is in compliance with any applicable rules and regulations.

Sec. 40-363. Inactivity during permit period; revocation.

(a) As a condition of a permit, it is the responsibility of the permit holder to diligently prosecute the work for which the permit was obtained; without limitation of the foregoing, the permit holder shall ensure that there is no period of 15 consecutive days or more during which the work site is inactive.

(b) The foregoing inactivity prohibition is inapplicable to:

- (1) A delay that arises from causes beyond control and without fault or negligence of the permit holder. Examples of these causes are:
 - a. Acts of God or of the public enemy.

- b. Acts of government in its sovereign capacity.
 - c. Fires, floods, or unusually severe weather.
 - d. Epidemics or quarantine restrictions.
 - e. Strikes or freight embargoes.
 - f. Discovery of pollutants at the site which requires cessation of activity pursuant to a federal, state, or local law.
- (2) A delay caused by an order to temporarily cease work issued by the traffic engineer or chief of police.

Sec. 40-364. Provisions cumulative.

(a) The provisions of this article are cumulative of all other applicable laws and ordinances. Compliance with this article shall not excuse compliance with any other requirement of laws or ordinances or the obtaining of any other license, permit, franchise, or other required authorization.

(b) Without limiting the foregoing, a separate permit is also required under article V of this chapter whenever the obstruction is for purposes of an excavation and the provisions of that article are applicable to the work. The director of public works and engineering shall coordinate the two permit processes.

(c) To the extent that any provision set forth in this article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, then this article shall be construed and applied in a manner that conforms to the state or federal law.

Sec. 40-365. Construction work in roadways or sidewalks; public work.

(a) With the exception of work addressed in sections 40-362(b)(5) or (b)(10) of this Code above, utilities, contractors of the city and other political subdivisions of the state who are performing construction, reconstruction, or repair work in the roadways or sidewalks or work that otherwise causes an impairment or obstruction shall be required to obtain a permit. Except as provided in section 40-373, nothing in this article shall be construed to authorize the imposition of restraints upon the contractor's work that are inconsistent with traffic control plans or other documents upon which the contracts for the work were bid or let, provided that the documents were reviewed and approved under subsection (b), below. However, the traffic

engineer shall not be obliged to issue a permit hereunder for work to be performed at times not authorized in the contract documents or for the occupancy of areas of any roadway or sidewalk that are not expressly authorized to be occupied for the performance of the work under the contract documents.

(b) Traffic control plans and other bid/contract related documents proposed for public works by the city or other political subdivisions that are for construction projects in a roadway or sidewalk or that will otherwise cause any impairment or obstruction of a roadway or sidewalk shall be submitted to the traffic engineer for review and approval by the public entity contracting for the work before bids are taken, or if the work is not let on bids, before the contract is negotiated.

(c) The defense set forth in section 40-362(b)(10) of this Code is not intended to excuse public employees from coordinating their work with the traffic engineer to ensure that impairments or obstructions conform to applicable requirements of this article, and the director of public works and engineering shall administratively adopt regulations for that purpose.

(d) Notwithstanding any provisions under this article to the contrary, the traffic engineer may issue a permit to a city department necessary to perform departmental functions without requiring a permit fee, release and indemnity provisions or evidence of insurance. The traffic engineer may adopt specific rules and regulations regarding time, place and manner with regard to such city department permits, as deemed appropriate to ensure that traffic and mobility are not adversely affected.

Sec. 40-366. Regulations.

The director of public works and engineering is authorized to adopt rules and regulations for the administration of this article. To the extent practicable, as determined by the traffic engineer, the rules and regulations may provide for the filing and processing of permit documents by electronic means.

Sec. 40-367. Penalty.

Violation of this article is unlawful and shall be punishable as provided in section 1-6 of this Code.

Sec. 40-368. Hearing.

Any person who is aggrieved by a decision of the city, its officials, or employees with respect to a permit application, impairment or obstruction abatement action, or other matter or action under this article shall, upon

written request, be entitled to a hearing to be conducted by hearing officer designated by the director of public works and engineering, who shall promulgate rules for hearings. The decision of the hearing officer shall be final. A hearing requested under section 40-126 of this Code may be consolidated with a hearing requested under this section.

Sec. 40-369, 40-370. Reserved.

DIVISION 2. PERMITS

Sec. 40-371. Administration and schedule of permit fees.

The traffic engineer shall issue and administer permits. The schedule of fees established pursuant to this section shall be applicable initially to the permits authorized to be issued pursuant to this article. The director of public works and engineering shall determine annually in connection with the city's fiscal year whether an increase or decrease in these fees is required for the sidewalk and roadway obstructions and impairments permit program, based on an analysis of the actual costs of administering and enforcing this program, and is hereby authorized to make adjustments annually to the schedule of fees. If the fee is increased, it may be increased only by the documented additional cost to administer and enforce this program. The traffic engineer shall not issue any permit unless and until the applicable fee has been paid, unless the applicant is exempt from paying a fee under city contract, including the "Adopt a Container" program, franchise agreement, or federal, state or local statutes or other applicable laws. Weekly fees shall not be prorated for obstructions lasting less than a full week. Persons who desire to obtain permits shall be charged a fee under the following conditions:

- (1) For an impairment or obstruction of a roadway or sidewalk, the permit holder shall pay, on a weekly basis only, the applicable fee as shown in Table 40-371 below. Fees are based upon single lane closures of up to one week in duration. Multiple lane closure fees are assessed separately. Each hundred block or portion thereof (for instance the 100 block, the 200 block, etc.) constitutes a full hundred-block closure.
- (2) Work areas include *transition areas*, *activity areas*, and *termination areas* as defined in the latest edition of Texas Manual of Uniform Traffic Control Devices.
- (3) A utility or public employee may apply for a general permit. A general permit may be used for all street obstructions except as defined below (or defined as an emergency):

- a. Obstructions may not be performed during peak traffic hours in the CBD and other high vehicle occupancy and transit corridors;
 - b. Obstructions may not reduce lane usage to less than two driving lanes in the CBD during off peak traffic hours;
 - c. Outside the CBD during off peak hours, obstructions may not reduce lane usage to less than one lane in each direction on roadways with four or more lanes, and not less than one lane on two-lane roadways;
 - d. Obstructions may not occur in conflict with special events or parades;
 - e. Sidewalk impairments in the CBD may not be performed under a general permit.
- (5) Any fees or revenues generated by roadway obstruction or sidewalk impairments covered under this article shall be divided evenly between the transportation special revenue fund administered by the public works and engineering department and the police special services fund administered by the police department.

TABLE 40-371.
FEE SCHEDULE

Single lane closure on local street	\$45 per lane, per block, per week
Single lane closure of roadway on major thoroughfare or major collector street outside CBD	\$80 per lane, per block, per week during off peak traffic hours \$100 per lane, per block, per week during peak traffic hours
Single lane closure of roadway on major thoroughfare or major collector street inside CBD	\$100 per lane, per block, per week during off peak traffic hours \$125 per lane, per block, per week during peak traffic hours or when lane usage is reduced to less than two lanes in the central business district

Partial sidewalk impairment or obstruction (maintaining 3 feet of pedestrian way)	\$60 per block, per week
Full sidewalk impairment or obstruction	\$90 per block, per week

Sec. 40-372. Application.

Persons who desire to obtain permits shall make application to the traffic engineer at least ten business days before the date on which the permit is required, unless the traffic engineer approves a shorter time, setting forth the following:

- (1) The applicant's name, business street address and mailing address if different, and business telephone number. If the proposed impairment or obstruction involves efforts of two or more persons, such as a utility and a contractor or an abutting property owner and a contractor, then they shall join as coapplicants, and the required information shall be provided for each.
- (2) The name and 24-hour telephone number of a person or persons whom the traffic engineer may contact if needed to resolve any issues that may arise with respect to the permit.
- (3) The purpose for which the permit is requested.
- (4) If the permit relates to construction or demolition work on abutting property, then the building permit number.
- (5) If the permit is for an activity for which any other city permit is also required, then the permit number or evidence that the application therefor has been filed.
- (6) If the permit is for street construction work, the name and description of the project, or if the city is the contracting agency, then the contract or job number.
- (7) The duration, dates, and times of day of the proposed impairment or obstruction.

- (8) A description of the proposed impairment or obstruction, including its size, material, and the location upon the roadway or sidewalk where it will be placed.
- (9) The reasons why the work, function, or activity proposed requires an impairment or obstruction of a roadway or sidewalk and cannot otherwise reasonably be accomplished.
- (10) A statement that if the permit is issued, the applicant as a permit holder accepts and obligates itself to the following release and indemnification provisions:

'RELEASE

PERMIT HOLDER AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

INDEMNIFICATION

PERMIT HOLDER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PERMIT, INCLUDING,

WITHOUT LIMITATION, THOSE CAUSED BY:

- (i) PERMIT HOLDER'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', PRINCIPALS', OR SUBCONTRACTORS OF PERMIT HOLDERS' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)--(iii), "PERMIT HOLDER") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (ii) THE CITY'S AND PERMIT HOLDER'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PERMIT HOLDER IS IMMUNE FROM LIABILITY OR NOT; AND
- (iii) THE CITY'S AND PERMIT HOLDER'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PERMIT HOLDER IS IMMUNE FROM LIABILITY OR NOT.

PERMIT HOLDER SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THE PERMIT AND FOR FOUR YEARS AFTER THE PERMIT TERMINATES.

WHERE APPLICABLE, THE PROVISIONS OF SECTION 283.057 OF THE TEXAS LOCAL GOVERNMENT CODE SHALL CONTROL IN LIEU OF THE FOREGOING; ADDITIONALLY, TO THE EXTENT THAT THE APPLICANT HOLDS A CURRENT AND VALID UTILITY FRANCHISE FROM THE CITY, THE RELEASE AND INDEMNIFICATION PROVISIONS OF THE FRANCHISE SHALL CONTROL IN LIEU OF THE FOREGOING.'

- (11) If the roadway obstruction or sidewalk impairment is proposed during peak traffic hours on streets within the central business district, or on major thoroughfares or major collector streets, the reason why the activity cannot reasonably be performed at an other time.
- (12) A detailed current traffic control plan for the impairment or obstruction, if required by the traffic engineer.

- (13) If proposed during other than peak hours, standard operating procedures that will be used to remove impairments or obstructions during peak hours.
- (14) A schedule of activities, if the work will occur for more than 14 days.
- (15) Any other information required to determine compliance with the requirements of this article.

Sec. 40-373. Review, issuance, terms, revocation.

(a) The traffic engineer shall, subject to the provisions of this article, approve an application as submitted or modified subject to subsection (b) below and issue a permit, unless he determines that:

- (1) The application is incomplete or materially untruthful;
- (2) The proposed impairment or obstruction relates to work or an activity that can reasonably be accomplished by alternative methods that, even if they might be more costly, would not require impairment or obstruction of the roadways or sidewalks; or
- (3) Based upon the scope and nature of the proposed impairment or obstruction and the anticipated vehicular or pedestrian traffic upon the roadway or sidewalk at the times requested, that the impairment or obstruction would substantially inconvenience the public in its use of the roadways or sidewalks and that the inconvenience would outweigh any public benefits from the work, function, or activity for which the impairment or obstruction is proposed.

(b) The traffic engineer may impose reasonable limitations upon the time and manner in which a impairment or obstruction will be authorized, which shall be consistent with the nature and time of the impairment or obstruction and its anticipated effects upon vehicular and pedestrian use of the roadways or sidewalks. Without limiting the foregoing, the traffic engineer shall not authorize an impairment or obstruction during peak traffic hours if a practicable alternative time schedule could be used, unless he determines that traffic and mobility will

not be adversely affected. Consistent with the foregoing criteria, the traffic engineer may require the permit holder to provide vehicular and pedestrian traffic control devices, alternative pedestrian walkways (covered or open), signage, and traffic control personnel at the permit holder's expense. The permit holder shall furnish any required traffic control personnel, such as flaggers or peace officers, in accordance with directives of the chief of police and at the permit holder's expense. To the extent that another person has previously requested or obtained a permit for all or part of the area subject to the application or the traffic engineer is aware of any other activity that will also affect traffic at the time and in the area affected by the application, the traffic engineer may require the persons to coordinate their impairments or obstructions or may delay the effective date of the permit until a previous impairment or obstruction or activity will have been concluded.

(c) Each permit shall be issued in writing, shall set forth the location, beginning and ending dates, authorized days of the week and times of day, nature and authorized site of the authorized impairment or obstruction, and any requirements for traffic control devices, signage, or personnel. The permit shall not be valid for any impairment or obstruction except in strict accordance with its terms and shall be void if used in any other time, place, or manner.

(d) Permits are personal to the permit holder and may not be assigned or used by any other persons.

(e) Upon written notice to the holder, a permit may be withdrawn, suspended, or revoked if the director of public works and engineering or the traffic engineer determines that it was issued by error, that the impairment or obstruction is having unanticipated adverse effects upon vehicular or pedestrian traffic, or that the holder has not complied with any applicable term of the permit.

Sec. 40-374. Permits for suspension of metered parking.

A person who wishes to suspend the operation of metered parking must obtain a separate permit to do so pursuant to division 2 of article VII of chapter 45 of this Code.

Sec. 40-375. Insurance.

(a) As a condition of the issuance of a permit, the applicant shall provide evidence that the applicant holds a current policy of

comprehensive general liability insurance covering the impairment or obstruction, with an endorsement for any liability assumed under this article and policy limits of not less than \$100,000.00 for property damage, per occurrence, and of not less than \$250,000.00, per person, and \$500,000.00, per occurrence, for bodily injury or death. Each policy shall include a provision designating the city as an additional insured with respect to activities under the permit and shall also include a provision obligating the insurer to furnish to the traffic engineer at least 15 days prior written notice of any cancellation.

(b) The failure of the permit holder to continuously maintain any required coverage shall cause any permit covered thereby to become void. No work may be performed on any excavation at any time when any required proof of insurance coverage is not on file in the traffic engineer's office.

(c) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or permit holder.

(d) To the extent that any other city permit, license, or authorization is required for the impairment or obstruction, and insurance coverage is also required as a condition thereof, then the permit holder shall not be required to duplicate coverage and may provide one policy that meets all applicable requirements.

Sec. 40-376. Emergencies.

(a) The traffic engineer shall establish a means by which obstructions of an emergency nature may be commenced without obtaining a street obstruction permit unless work continues longer than 24 hours, at which time a full application shall be filed. Permit fees are waived for the duration of the emergency obstruction. The application shall include an explanation of the nature of the emergency, a description of the proposed impairment or obstruction, the duration, dates, and times of day of the proposed impairment or obstruction, and the name and emergency contact telephone number for the requestor.

(b) In addition to the defenses provided in section 40-362(b) of this Code, it is an affirmative defense to prosecution under section 40-362(a) that the impairment or obstruction was reasonably required to address an emergency. This affirmative defense shall only apply pending the timely submission of a permit application and shall not be valid if the application

is denied.

Sec. 40-377. Posting at impairment or obstruction site.

(a) The permit holder shall post a copy of the permit at each impairment or obstruction site in accordance with the regulations issued under section 40-365 of this Code.

(b) In any prosecution under section 40-362 of this Code, it shall be presumed that no permit existed unless the permit is posted as required under subsection (a) of this section.

Sec. 40-378. Abatement.

Impairments or obstructions that are created without a permit or that are created in a time, place, or means that is inconsistent with a permit shall be subject to summary abatement upon order of or by the traffic engineer or any peace officer of the city. If the person causing the impairment or obstruction is present at the site, the traffic engineer or peace officer may, consistent with the nature of the impairment or obstruction and ambient traffic conditions, afford an opportunity to remove the impairment or obstruction. Otherwise, the impairment or obstruction shall be removed by city forces or contractors. Any costs of removing the impairment or obstruction shall be assessed to the person who caused it, if known, and, no additional permits shall be issued to that person until the city has been reimbursed for the costs. To the extent that an impairment or obstruction has an identifiable owner and an apparent value of \$100 or more, the obstruction, unless of a perishable nature, shall be placed in storage for a period of 30 days, and the owner shall be notified and afforded an opportunity to have the return of the item, subject to payment of any removal and storage costs."

Section 3. That Subsection (a) of Section 40-8 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(a) It shall be unlawful for any person to expose for sale or to sell any foodstuffs of any nature, any liquids, or any other goods, wares, or merchandise, either exposed or enclosed in boxes, crates, barrels, baskets or any other container or any animals, on any sidewalk, street, parkway, esplanade or any other public property or any property dedicated to public use."

Section 4. That Section 40-125 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"Sec. 40-125. No private rights in public way.

Nothing in this article shall be construed to give any person or permittee any property right in or to the use of the public way. All permits issued and held under this article shall be subject to the superior right of the public to control the use of the public way and ensure the safe and orderly movement of traffic, and a separate permit shall be required under article XVII of this chapter where applicable to any work that causes an obstruction."

Section 5. That Part d of Item (5) of Section 40-163 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"d. The owner or contractor when working on a public way that is designated as a major thoroughfare or a collector street on the major thoroughfare and freeway plan as defined in section 42-1 of this Code has obtained a valid permit under article XVII of this chapter where applicable; and"

Section 6. That Subsection (f) of Section 40-336 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

"(f) *Work in the public way.* Any work that constitutes an obstruction of a street for which a permit is required under section 40-362 of this Code shall only be performed in accordance with a permit issued under Article XVII of this chapter."

Section 7. That Sections 31-47, 39-99, 40-7, 40-11, 40-13, 40-28, and 45-18 of the Code of Ordinances, Houston, Texas are hereby repealed.

Section 8. That the provisions of article XVII, as amended in Section 2, above, shall apply prospectively to persons obtaining permits from and after the effective date of this Ordinance. The provisions of article XVII of the Code of Ordinances as they

read prior to their amendment by this Ordinance shall continue to apply to persons obtaining permits before the effective date of this Ordinance, and the said provisions are saved from repeal for that limited purpose.

Section 9. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 10. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the 90th day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this 25th day of May, 2004.



Mayor of the City of Houston

Prepared by Legal Dept. _____
PRB:JLS:asw 4/19/04 Assistant City Attorney
Requested by David Saperstein, Chairman, Mayor's Office of Mobility
L.D. File No. 0630400092001

AYE	NO	2004-498
✓		MAYOR WHITE
••••	••••	COUNCIL MEMBERS
✓		LAWRENCE
	ABSENT	GALLOWAY
✓		GOLDBERG
✓		EDWARDS
	✓	WISEMAN
✓		KHAN
✓		HOLM
✓		GARCIA
✓		ALVARADO
✓		ELLIS
✓		QUAN
✓		SEKULA-GIBBS
✓		GREEN
	ABSENT	BERRY
CAPTION	ADOPTED	